

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Assignee: Adaptive Technologies, Inc. Docket No.: 10079.0100
Serial No.: 09/504,939 Inventor: Stephens et al.
Filing Date: February 16, 2000 Examiner: Daniel S. Felten
Title: SYSTEM AND METHOD FOR Art Unit: 3693
CREATING, DISTRIBUTING AND
MANAGING ARTIFICAL AGENTS

REPLY BRIEF

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This Reply Brief is in response to the Examiner's Answer dated April 14, 2010, and is intended to supplement the remarks made in the Appeal Brief originally submitted on February 25, 2009. The Appeal Brief and the Reply Brief are both presented in support of the Appeal of the final decision of the Examiner dated February 25, 2008, wherein the Examiner finally rejected claims 24-39, 46-61, and 67-76 of the present application, and was not persuaded by the Appellants' request for reconsideration dated August 25, 2008.

This Reply Brief is being submitted as set forth in 37 C.F.R. § 41.41.

REMARKS

All of the rejections raised by the Examiner's Answer are based on mischaracterization of the prior art references and inadequately supported motivations to combine the references. The Examiner's Answer relies on an interpretation of the references which is contrary to the plain meaning of their disclosures and also credits the references as disclosing more than what can genuinely be interpreted from the text of the references. The basic requirements for a *prima facie* case of obviousness are lacking and the rejections remain unsupported.

The Examiner's Assertion that the References Disclose an Agent Factory as claimed is incorrect

The Examiner's Answer states that the Schutzer reference discloses "the use of intelligent agents for financial transactions, services accounting and advice. (see column 3, lines 24-35:column 4, lines 27-59, esp. lines 26-40). The secondary reference, Pollock, discloses architecture for an artificial agent that reasons defeasibly." The Examiner's Answer, however, fails to explain how "the use of intelligent agents for financial transactions" and "an artificial agent that reasons defeasibly" in any way discloses the express limitation of an agent factory that "monitors recommendations provided by a first artificial agent" as claimed. The Examiner's Answer asserts that certain portions of the Schutzer disclose an agent factory with a graphic user interface that "*is configured to display* recommendations/reports/alarms." However, the portions of the Schutzer reference relied on by the Examiner's Answer merely disclose a graphic user interface, an alarm system that is used when a payment is past due, and the ability for a user to download records from a bank server. The appellants respectfully submit that these features are in no way the same as monitoring "recommendations provided by a first artificial agent" as claimed.

Additionally cited portions of the Schutzer reference merely indicate that the disclosed system utilizes intelligent agents to "monitor, collect, and generate user-specific advice, reports, or alerts" and that the intelligent agents "trace and monitor financial transactions and financial

expenses.” The “defeasible” nature of the Pollock reference describes the ability of the Pollock system to input new data into the system so that an updated plan is “better supported by the new data and reasoning.” Contrary to the assertions of the Final Office Action and the Examiner’s Answer, neither of these references remotely discloses or suggests the limitation of an agent factory that “monitors recommendations provided by a first artificial agent.”

The Examiner’s Answer states that the Schutzer reference “discloses that the users may modify payment instructions of the artificial agent to be customized to the particular needs (see [Schutzer], column 3, lines 5-61), but fails to disclose creating a new artificial agent per se.” The Examiner’s Answer also asserts that modifying an existing agent as disclosed by the Pollock reference “would provide an essentially new artificial agent” because it would “‘behave’ within predetermined levels or within required rules or criteria.” Finally, the Examiner’s Answer states that “creating new agents is considered the ability of the artificial agent to ‘adapt’ and change its behavior in [a] new way by supplying the agent(s) new information as suggested by Schutzer.” The appellants respectfully submit that an “essentially new” artificial agent that can “perform alternative functions” is not the same as “making a second artificial agent available for distribution” as expressly claimed. Modifying a first agent to perform differently is not the same as distributing a second agent regardless of how the first agent may have been adapted.

Furthermore, as highlighted in the appellants’ appeal brief, several other express limitations recited in the independent and dependent claims remain completely unaddressed. For example, the express limitations in independent claim 24 requiring a management system that determines “whether the first artificial agent is performing below a predetermined predictability value” and then retires the first artificial agent in “response to performance of the first artificial agent [being] below the predetermined predictability value” remain unaddressed. The appellants submit that if each and every limitation of the claims has not been addressed, then a conclusion of obviousness cannot be validly reached.

The Examiner Provides No Valid Motivation to Combine the References

The appellant reiterates that “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR v. Teleflex*, 550 U.S. 398, 418 (2007) (citing *In re Kahn*). Additionally, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. MPEP § 2143.01(VI). Furthermore, “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” MPEP § 2143.01(V) (citing *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

In the present case, the Schutzer reference is directed towards a system that provides various agents that are individually tasked to automate operations such as: tracing and recording transactions, collating information, transferring data to and from servers, analyzing data, and providing reports to users based upon the transactions they have engaged in, account balances, and/or payment reminders. The Pollock reference, on the other hand, is directed towards an automated decision making system that uses defeasible reasoning to adopt plans for robotics, assembly lines, medical or fault diagnosis, and scheduling based on the conclusions of the reasoning. The Examiner’s Answer continues to fail to provide a valid reason why one of ordinary skill in the art would be motivated to combine the teachings of a system for tracking, analyzing, and reporting information with a system that adopts plans based upon reasoning.

The appellants respectfully submit that one of ordinary skill in the art would not view the Schutzer and Pollock references as complimentary to each other, let alone provide sufficient motivation to combine their respective teachings for the predictable result of arriving at the present claims, since the cited references achieve different results through vastly different methods. Modifying the Schutzer reference with the Pollock reference as suggested by the office action would require the Schutzer system to actively execute its various agents based upon the conclusions of a reasoning process resulting in a complete change in its operation. For example,

the Pollock reference explicitly states that it operates by receiving two kinds of input, “namely percepts provided by perception, and desires produced by operative dispositions.” The office action has failed to indicate why one of ordinary skill in the art would consider these types of input relevant to the tracking of financial transactions addressed by the Schutzer system.

The office action has also failed to provide the necessary articulated reasoning with some rational underpinning why one of ordinary skill in the art would be motivated to combine prior art references which operate in completely unrelated ways. Furthermore, the fact that the Pollock reference discloses modifying a single agent’s “beliefs” inherently teaches away from replacing that agent. It is therefore submitted that one of ordinary skill would not have recognized that the results of the combination suggested in the office action were predictable or in any way beneficial. Accordingly, the applicants submit that since a *prima facie* case of obviousness has not been established, the rejections of the claims cannot be supported and should be withdrawn.

The Rejections are Based on Hindsight

The Examiner’s Answer contends that it is obvious to combine the Schutzer reference with the Pollock reference because modifying an existing agent is “essentially” the same as “making a second artificial agent available for distribution” after it has been determined that a first artificial agent “is performing below a predetermined predictability value” and has been retired. However, the Examiner has failed to demonstrate that the prior art references of record actually disclose these express limitations. The appellants respectfully submit that given the shortcomings of the cited references, it is only possible to reach a conclusion of obviousness through the impermissible use of hindsight reasoning based upon the appellants’ disclosure.

In re McLaughlin states that hindsight reasoning is proper if it is only taking into account “knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant’s disclosure.” *KSR*, 550 U.S. at 421. If the claimed limitations are not found in the prior art and it has not been

demonstrated that the prior art contained a “base” device upon which the claimed invention can be seen as an “improvement,” then the appellants submit that a *prima facie* case of obviousness has not been met. Therefore, the only way for the Examiner to reach the conclusions expressed in the Examiner’s Answer is by relying on the appellants’ disclosure. Clearly, there is nothing in either of the cited references to suggest retiring and replacing existing artificial agents when the only reference used to support this contention teaches modifying and adapting a single agent. The appellants’ respectfully submit that the present rejections are exactly the type of distortion that the court in *KSR* warned of.

CONCLUSION

For the foregoing reasons, in addition to the reasons cited in the Appeal Brief, the appellants respectfully request that the Board review and reverse the rejections of all the pending claims, and that notification of the allowance of these claims be promptly issued.

Respectfully submitted,

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